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PETITION FOR WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES
NO. A-646
Spring Term, 1974

HILLCREST PRESBYTERIAN CHURCH
OF SEATTLE,

Petitioner

vs.

PRESBYTERY OF SEATTLE, INC.,

Respondent

BOARD OF NATIONAL MISSIONS OF
UNITED PRESBYTERIAN CHURCH,

Respondent

vs.

HILLCREST PRESBYTERIAN CHURCH
OF SEATTLE,

Petitioner

PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF WASHINGTON
AND
COURT OF APPEALS OF WASHINGTON, DIV. II

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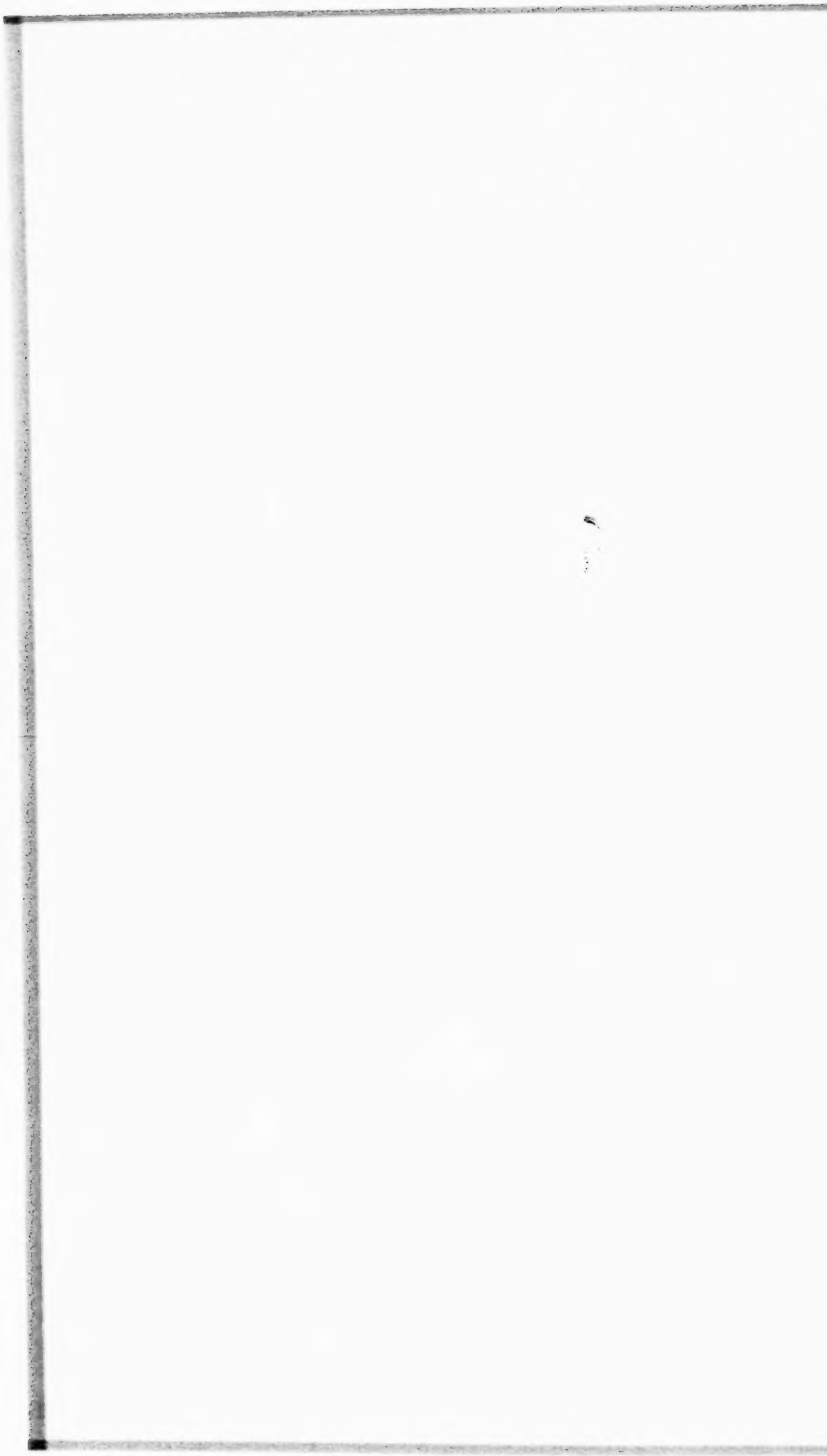

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IN THE

SUPREME COURT OF THE UNITED STATES

Spring Term 1974

No. A-646

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, a Washington corporation,

Petitioner

vs.

PRESBYTERY OF SEATTLE, INC., a Washington corporation,

Respondent

BOARD OF NATIONAL MISSIONS OF UNITED PRESBYTERIAN CHURCH,

Respondent

vs.

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, a Washington corporation,

Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner, Hillcrest Presbyterian Church of Seattle, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Washington and the Court of Appeals of the State of Washington, Division II, entered in this proceeding on October 9, 1973.

OPINION BELOW

By order dated October 9, 1973, the Supreme Court of the State of Washington denied the petition to review the opinion of the appellate court of the State of Washington, Division II. A copy of the order of denial appears in the appendix hereto. The opinion of the Court of Appeals of the State of Washington, Division II, is an unpublished opinion and appears in the appendix hereto. The opinion of the Court of Appeals of the State of Washington, Division II, is an unpublished opinion and appears in the appendix hereto.

JURISDICTION

The order of the Supreme Court of the State of Washington denying review was entered October 9, 1973. There are no provisions for rehearing of such an order in the State of Washington, and this petition for certiorari was filed within ninety days of that date. This court's jurisdiction is invoked under 28 USC Sec. 1257.

QUESTIONS PRESENTED

1. Is the establishment clause of the U. S. Constitution First Amendment violated when a state civil court adopts ethic methods for determining church property disputes between churches with one type of internal structure and churches with another type of internal structure?

2. Does the First Amendment to the U. S. Constitution, Article I, impose a duty upon civil courts to decide questions of law and fact in controversies over church property where such questions can

be decided without reference or interpretation of ecclesiastic doctrine or dogma, and is that duty violated when a state civil court accepts as verities purely civil determinations in such matters without a thorough case by case examination?

3. When a state civil court allows an ecclesiastical tribunal to decide purely civil questions, is such action an unlawful delegation of the responsibilities of the state civil court in violation of the establishment clause of the First Amendment to the U. S. Constitution?

4. When a state civil court recognizes the dissolution of one non-profit corporation, validly formed under the state laws of said state, by another non-profit corporation when no such action is provided or authorized in the statutes providing for non-profit corporations; and when such action is unique to one form of hierarchial structure for the ecclesiasti-

cal bodies, is such action in violation of the equal protection clause of the U. S. Constitution, Amendment Fourteen, Section 1?

5. Where a national church body helps solicit and obtain funds for building a local church on the representation that the local church is the owner of said buildings and a civil court decrees foreclosure upon said property of a gift or "grant" mortgage, and at the same time decrees implied title in trust for the national body, is that state action depriving the local church corporation of property without due process of law and equal protection under the 14th Amendment to the Constitution?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Article 1.

U. S. Constitution, Amendment 14, Sec. 1.

Revised Code of Washington, 24.03.220

Revised Code of Washington, 24.03.250

STATEMENT OF CASE

Hillcrest Presbyterian Church of Seattle is a non-profit corporation formed and organized under the statutes of the State of Washington. Through contributions and occasional loans, the congregation of Hillcrest Presbyterian Church acquired property and improved said property over the years in the City of Seattle, Washington. The Presbytery of Seattle, Inc. is a Washington corporation and part of the United Presbyterian Church of the U.S.A., a religious society established to advance the Presbyterian religion.

Hillcrest Presbyterian Church, hereinafter referred to as "Hillcrest," at all times pertinent herein was in possession, exercised all the incidents of ownership, had all the indictia of legal and equitable title and claimed full ownership of certain real and personal property in the City of Seattle, Washington. Twenty-five per cent

of the building fund contributions were by non-church members, but by persons attending church or Sunday school. (R-68)

In 1967 certain differences arose between Hillcrest and Presbytery, and Hillcrest became desirous of severing all relationships with Presbytery. By unanimous consent, the members of Hilldrest took certin steps as provided in the statutes of the State of Washington regarding non-profit corporations to sever the ties with Presbytery. In response, on August 20, 1968, Presbytery purported to dissolve Hillcrest Church through the internal procedure of the Presbytery, United Presbyterian Church of the U.S.A., and demanded that Hillcrest deliver possession of all of its church properties to Presbytery. None of the procedures followed by Presbytery are provided for in the non-profit corporation laws of the State of Washington. Hillcrest commenced an action to determine the true ownership of the pro-

perty involved and by its amended complaint, prayed for an adjudication that it was the owner of all the property involved. Presbytery answered and generally denied the allegations of Hillcrest and alleged that Presbytery had supervision of Hillcrest and as such, had dissolved the Hillcrest Church. At trial on the merits, the issues presented consisted of property involved, control and management of the property, and other issues material to the ownership of the property. All of Hillcrest's evidence showed title in fee simple in Hillcrest, starting with a quit-claim deed to this property from First Presbyterian Church of Seattle.[1] Presbytery presented extensive evidence as to the alleged internal structure of the Presbyterian Church of the U.S.A. and its various subdivisions. There was absolutely no evidence presented that the ownership of the property involved had to be determined by the interpretation of a religious or ecclesiastical doctrine.

1. The Court foreclosed a "gift" mortgage in favor of Nat'l. Board of Missions, Inc., against Petitioner in a consolidated trial, although the Court, paradoxically found in the same action that the National Presbyterian Church was the owner of the buildings built by Peti-

There was extensive evidence that Presbytery always dealt with Hillcrest and Hillcrest's property at arms length, without interfering with the Hillcrest management and control of the property. There was also extensive evidence from its formation that the congregation and members of Hillcrest always believed that Hillcrest had absolute ownership of the property acquired, and were never aware or informed by Presbytery had any claim to the property and in particular, all representations[2] for fund raising by Presbytery were that Hillcrest Corporation was sole owner of this real estate. The evidence disclosed quitclaim deeds[3] to the property from the Presbytery to Hillcrest, and that all the deeds and title to the property involved showed Hillcrest, a corporation, as the owner of the property. These representations were made during fund drives to members and nonmembers alike.

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2 (R-79, R-704, R-707, R-719) See Ex. 44, R-729. See Ex. 90, R-800

REASONS FOR GRANTING WRIT

THE DECISIONS BELOW IS IN VIOLATION OF THE FIRST AMENDMENT TO THE CONSTITUTION OF THE U.S.A.

A mandate of neutrality established by the First Amendment to the U. S. Constitution requires not only that the civil courts refrain from determining and interpreting ecclesiastical doctrine, but also that civil courts jealously guard and unfailingly perform their function of determining civil matters. In effect, civil courts must not determine ecclesiastical doctrine, and must determine civil matters. When a civil court allows an ecclesiastical tribunal to decide purely civil matters, it is failing in its First Amendment mandate and summarily closes its doors to litigants in certain types of church litigation.

Presbyterian Church of U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969), the court stated:

> "The First Amendment prohibits a state from employing a religious organization as an arm of the civil judiciary to perform the function of interpreting and applying state standards." (p. 451)

The Washington Appellate Court, in reviewing this case below, summarily held that petitioner, Hillcrest Church's claim to the property was controlled by the Washington Supreme Court decision, Presbytery of Seattle, Inc. v. James R. Rohrbaugh, et al, appellants, 79 Wn.(2d) 367, without examining the differences in fact between the two cases. In Presbytery v. Rohrbaugh the court stated that the United Presbyterian Church is an association of local Presbyterian churches governed by hierarchy, which is laid out in the court opinion. By its action in summarily applying that case to the instant case, the Supreme Court of the State of Washington is holding that as a matter of law, all Presbyterian churches associated with the United Presbyterian Church have but one relationship

to the United Presbyterian Church. By so holding, the State of Washington is establishing a church body as a matter of law contrary to the First Amendment to the U. S. Constitution. By not examining the relationship of the local churches on a case by case basis, the courts of the State of Washington have summarily closed their doors to many churches in the position of petitioner. See Gonzales v. Archbishop of Manila, 280 U.S. 1.

BY ALLOWING PRESBYTERY OF SEATTLE TO SUMMARILY DISSOLVE HILLCREST PRESBYTERIAN CHURCH CONTRARY TO THE LAWS OF THE STATE OF WASHINGTON, THE COURTS ARE ALLOWING ECCLESIASTICAL TRIBUNALS TO APPLY STATE STANDARDS AND STATE LAWS CONTRARY TO THE MANDATES OF THE FIRST AMENDMENT.

The statutes of the State of Washington pertaining to non-profit organizations, provide for the dissolution of such corporations by either of two methods; (1) upon action of the internal structure of the corporation, R.C.W. 24.03.220 (set out in Appen-

dix hereto), and (2) quo warranto by the Attorney General, R.C.W. 24.03.250, (set out in Appendix hereto). The tacit recognition by the courts of the State of Washington of the alleged "dissolution" of Hillcrest Presbyterian Church by the Presbytery of Seattle is in complete contravention of the guide lines and mandates of the First Amendment, as set forth in Presbyterian Church v. Hull Church, 393 U.S. 440. This action is arbitrary and capricious, and accomplished by misrepresentation, making it subject to review as per the exceptions in Gonzales v. Archbishop of Manila, 280 U.S. 1.

THE DECISION BELOW SIGNIFICANTLY AFFECTS THE PROPERTY RIGHTS OF HUNDREDS OF SIMILARLY SITUATED CHURCHES, NOT ONLY IN THE STATE OF WASHINGTON, BUT THROUGHOUT THE NATION AND UNCONSTITUTIONALLY DEPRIVES THEM OF MILLIONS OF DOLLARS IN CHURCH PROPERTY

Hillcrest Presbyterian Church is not uniquely situated in its attempts to protect its property. There are many other Presbyterian churches within the State of Washing-

ton and many hundreds of others with the United States whose property rights are affected by the decision below. Close to 300 churches in the southern part of this country have separated from the United Presbyterian Church, U.S.A., and are in the process of taking their property with them; and suits are pending for property disputes in a number of these congregations. The determination of a hierarchial structure as a matter of law without examining case by case legal relationships of church entities, the overall church structure, deprives these church entities of the legal examination of their property rights.

> "The establishment clause forbids subtle departures from neutrality, 'religious gerrymanders', as well as obvious abuses."
>
> Waley v. Tax Commission, 397 U.S. 696

By failing to examine fully the nature of the controversy and claims involved, the courts of the State of Washington have closed its

doors to a particular segment or type of religious entities, and are guilty of "religious gerrymandering" and have deprived petitioner and all other entities similarly situated of constitutional rights, property and freedom of religion under the First Amendment of the U. S. Constitution, and of the equal protection clause of the 14th Amendment. See Gonzales v. Archbishop of Manila, 280 U.S. 1, 50 S. Ct. 5, 74 L. Ed. 131, where this court held that religious judicatories need not be followed where there was evidence of fraud, collusion or arbitrariness. In view of the misrepresentations of where title was to be lodged during fund raising and the arbitrary dissolution of the Hillcrest Corporation, the Gonzales case is controlling.

The State court ignored misrepresentation as to congregation ownership of buildings made by the National Church officials when helping local church raise funds. The

court refused to invoke "equitable estoppel" against the National Church through Presbytery, although the evidence required it. The court foreclosed a "gift" or grant mortgage against the local church, notwithstanding the same decree held the National Church was the owner of the property through an "Implied Trust." The foreclosing mortgagee, National Board of Missions, Inc., was a wholly owned subsidiary of the National Church. In spite of the fact the National Church benefited by $1,414,000.00 spent by Hillcrest on Presbyterian activities for which Hillcrest claimed payment of the mortgage,[4] the foreclosure was granted.

The misrepresentation of the local church ownership in fund drives that paid for the local church buildings, and the dissolution of the Hillcrest Religious Corporation, supported and upheld by the court's decree, is state action, violating due process and equal protection under the 14th

[4] (R-800)

Amendment to the U. S. Constitution. The case at bar comes within the exceptions for court review listed in Gonzales, supra.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review this judgment and opinion of the Court of Appeals of Washington, Div. II, and Supreme Court of the State of Washington.

Respectfully Submitted,

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Seattle, Washington
98104

CERTIFICATE

I certify that the foregoing petition is presented in good faith and not for delay.

MALCOLM S. McLEOD
Counsel for Petitioner

APPENDIX "A"

Revised Code of Washington, 24.03.220

VOLUNTARY DISSOLUTION. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Writted or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation

shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

Revised Code of Washington 24.03.250

INVOLUNTARY DISSOLUTION. A corporation may be dissolved by a decree of the superior court in an action filed by the attorney general when it is established that:

(1) The corporation has failed to file its annual report within the time required by this chapter; or

(2) The corporation procured its articles of incorporation through fraud; or

(3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(4) The corporation has failed for ninety days to appoint and maintain a registered agent in this state; or

(5) The corporation has failed for ninety days after change of its registered agent to file in the office of the secretary of state a statement of such change.

APPENDIX "B"

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, a Washington corporation,

Appellant,

v.

PRESBYTERY OF SEATTLE, INC., a Washington corporation, et al,

Respondent.

BOARD OF NATIONAL MISSIONS OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, a corporation,

Respondent,

v.

HILLCREST PRESBYTERIAN CHURCH, a corporation, a/k/a HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, a Washington corporation,

Appellant.

No. 696-II

Division Two

UNPUBLISHED OPINION

Filed July 17 1973

PER CURIAM - Hillcrest Presbyterian Church appeals from judgments entered against it in two separate actions--a dispute as to ownership of the church property in which Hillcrest sought to quiet title against Presbytery of Seattle, Inc., and an action by the Board of National Missions of the church to foreclose the mortgage on the church property. These two matters were consolidated on appeal.

The facts, as found by the trial court, based upon substantial evidence, bring both cases squarely within the rationale and rules announced by the Supreme Court in Presbytery of Seattle v. Rohrbaugh, 79 Wn. 2d 367, 485 P.2d 615 (1971).

Accordingly, judgment is affirmed.

Pursuant to RCW 2.06.040 as amended by the Laws of 1971, ch. 41, S 1, this opinion will not be published.

APPENDIX "B"

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, Petitioner, vs. PRESBYTERY OF SEATTLE, INC., et al., Respondents.	No. 42937 Department (696-II) ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause,

It is ordered that the petition be and it is hereby denied.

Dated this 9th day of October, 1973.

FILED
SUPREME COURT
OLYMPIA, WASHINGTON
'73 Oct 9 P M 1:56
WILLIAM M. LOWRY
By hr Clerk Deputy

FRANK HALE
Chief Justice

9 Wn. App. 1010

SUPREME COURT, U.S.

73-1350

JUL 29 19

IN THE

Supreme Court of the United States

Spring Term, 1974

No. 73-3150

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE
Petitioner,
v.
PRESBYTERY OF SEATTLE, INC.
Respondent,
BOARD OF NATIONAL MISSIONS OF UNITED PRESBYTERIAN CHURCH
Respondent,
v.
HILLCREST PRESBYTERIAN CHURCH OF SEATTLE
Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND COURT OF APPEALS OF WASHINGTON, DIV. II

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IN THE

Supreme Court of the United States

Spring Term, 1974

No. 73-3150

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE
Petitioner,
v.
PRESBYTERY OF SEATTLE, INC.
Respondent,
BOARD OF NATIONAL MISSIONS OF UNITED PRESBYTERIAN CHURCH
Respondent,
v.
HILLCREST PRESBYTERIAN CHURCH OF SEATTLE
Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND COURT OF APPEALS OF WASHINGTON, DIV. II

QUESTIONS PRESENTED

1. Should the Washington Supreme Court be permitted to follow *Watson v. Jones*, 80 U.S. 679 (1872), as it has done continuously for nearly seventy-five years?

2. Did the Washington Supreme Court correctly apply the *Watson* "rule of action," as recently approved by the *Hull Church* case, by accepting as "final and binding" the

decisions of Respondent Presbytery of Seattle, Inc. with respect to the control of the Hillcrest Presbyterian Church of Seattle and its property?

3. Even if the Washington Supreme Court applied "neutral principles of law," would the Washington Supreme Court reach the same result because of the Articles of Incorporation and the By-laws of the Hillcrest Church?

STATEMENT OF THE CASE

Much of the Petitioner's Statement of the Case (Pet. 6-9) is inaccurate. Petitioner fails of include many facts that are essential to a full understanding of the issues (Pet. 6-9). The following briefly corrects those problems.

I. Nature of the Case

Petitioner is inaccurate (Pet. 7-8) in stating the dispute is over ownership of real and personal property; the dispute is basically whether Petitioner may divert church properties to its own use, contrary to the Constitution of the United Presbyterian Church, the Orders of Presbytery and the Articles of Incorporation and By-laws of the Hillcrest Presbyterian Church.

II. Summary of the Facts

Contrary to Petitioner's contention (Pet. 6-9), the Hillcrest Church, was a regular member of the United Presbyterian Church in the United States of America, initiated by the First Presbyterian Church of Seattle (R. 593), organized by the Presbytery of Seattle, and an integral part of the Presbyterian organization. The evidence emphasized the participation of Hillcrest Church as a full fledged member of the United Presbyterian Church and of the

Presbytery of Seattle. The pastor was installed by the Presbytery (R. 157); he was a member of Presbytery (R. 159); meetings of Presbytery were held at the Hillcrest Church (R. 160); the church sent voting delegates to Presbyterian meetings (R. 161, 167, 168); minutes of the ruling boards of the church were regularly submitted for approval by Presbytery (R. 164); every officer ordained in the church for 20 years took oath to support the United Presbyterian Church (R. 212); the church paid its usual per capita support tax of the United Presbyterian Church (R. 800); and approval by Presbytery of all mortgages or sales of church property were required and were requested by Hillcrest Church (R. 811; Ex. 20, Sec. 62.08).

The Hillcrest Church, as an ecclesiastical member of the United Presbyterian Church, was dissolved by Presbytery at its August 20, 1968, meeting after one year of continued statements by Hillcrest Church officers that it had renounced all jurisdiction of Presbytery and its refusal to meet with a representative of Presbytery. This decision of Presbytery was not appealed, was in fact ignored (R. 829).

Hillcrest Church attempted, via the trustees of the church, to amend the Articles of Incorporation (R. 100) in September 1967, so as to eliminate all reference to and jurisdiction of the United Presbyterian Church. The trustees of the appellant Hillcrest Church have but extremely limited authority. Primary authority over a particular church is vested with the Sessions, not with the trustees or congregation. Section 41.08, Form of Government, Book of Order (Ex. 20, 21) provides that:

"The Church Session shall have authority over all

> the affairs and activities of the particular church, except such matters as may, by this form of government, be specifically accorded to the pastor, to the congregation or to a higher judicatory."

The authority of the trustees is set forth in Section 62.08, Form of Government, which provides that:

> "Whether by civil law the trustees of a particular church . . . are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the Session, and their authority in respect to the selling, mortgaging and leasing of real property shall be subject also . . . to the permission of Presbytery as herein provided."

The original Articles of Incorporation (Ex. 30) and By-laws (Ex. 31) were specific as to Hillcrest Church being a part of and subject to the jurisdiction and Constitution of the United Presbyterian Church. These documents provided, in fact, that no amendments could be had which were not in conformity with the Constitution of the United Presbyterian Church. These original Articles and By-Laws were adopted when the Hillcrest Church was organized as a member of the Presbytery of Seattle and governed the church for 27 years preceding September 1967 (R. 148).

ARGUMENT

I. Summary of Argument

Petition for a Writ of Certiorari to the Supreme Court of the State of Washington should be denied by this court because: (1) the Washington Supreme Court did not decide a substantial federal question which has not already been decided by this court, (2) the decision of the Washington Supreme Court is in accord with the applicable

decisions of this court, and (3) there are no other "special and important reasons" for granting certiorari in this case.

The Washington Supreme Court, in refusing review of the Washington Court of Appeals, Division Two, concurred with the rationale and rules announced earlier by the Supreme Court in *Presbytery of Seattle v. Rohrbaugh*, 79 Wn.2d 367, 486 P.2d 615 (1971), a decision for which this court was requested to issue a Write of Certiorari and which was denied (Supreme Court of the United States, October Term, 1971, #71-563, Denied March 20, 1972).

If the Washington Supreme Court had decided to depart from *Watson v. Jones*, 80 U.S. 679, 20 L. Ed. 666 (1872), and rely on "neutral principles of law", the result in this case would be the same.

II. Argument in Support of Judgment

A. *Washington Supreme Court Correctly Followed Decisions of this Court*

The role of the civil courts with respect to questions concerning church discipline or faith, ecclesiastical law, or use of church property has been before the United States Supreme Court on several occasions, recently in 1969 in *Presbyterian Church v. Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601, and the leading case *Watson v. Jones*, 80 U.S. 679, 20 L.Ed. 666. This court in the *Watson* case held in favor of the faction that remained loyal to the Presbyterian Church in the United States. The opinion of this court classified the three types of cases which had come before the courts, the third of which was: where the religious congregation or ecclasiastical body holding the

property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory over the whole membership of that general organization (80 U.S. at p. 722.).

This court discussed the principle of finality of ecclesiastical decisions in civil cases and concluded at pages 729-730:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their rights to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*" (Emphasis added.)

The rule of the conclusive nature of ecclesiastical decisions was adopted by the Washington Supreme Court many years ago. In *Wilkeson v. Rector, etc., St. Luke's Parish,* 176 Wash. 377, 384-5 (1934), the Washington Court stated that it is a well recognized principle of law that:

"In the absence of fraud, where the right of property

> in a civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it in its application to the case before it. *Hendryx v. People's United Church,* 42 Wash. 336, 84 Pac. 1123, 4 L.R.A. (N.S.) 1154; *Watson v. Jones,* 80 U.S. 679, 20 L. Ed. 666."

The most recent consideration by the Washington Court is *The Presbytery of Seattle, Inc., et al v. James R. Rohrbaugh, et al,* 79 Wn.2d 367 (1971). Upholding the trial court in an unanimous opinion, this 1971 case quotes the significant language of *Watson v. Jones,* then goes on to affirm the lower court with these words (page 373):

> "This court has adopted the rule of *Watson v. Jones,* supra, in cases of this kind, having held in *Herman v. Tieton View Community Methodist Episcopal Church,* 33 Wn. 2d 716, 207 P. 2d 699 (1949), that in absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive. The propriety of this rule was again recognized in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hall Memorial Presbyterian Church,* supra (393 U.S. 440, 21 L. Ed. 2d 658, 89 S.Ct. 601) (1969). We see no reason to abandon it.
>
> "The appellants are not, as they contend, the record title holders of the property. The record title is in the United Presbyterian Church of Seattle, a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a session which must act in accord with that discipline. The appellants have withdrawn from that

church, but according to the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the session who withdraw forfeited their right to govern the affairs of church when they did so, according to the decision of the highest tribunal to which an appeal was taken, and consequently the appellants had no right to control the use of the property.

B. ***Response to Petitioner's Argument***

1. Decision does not abdicate law to ecclesiastical authority.

Contrary to the assertions of Petitioner (Pet. 10), the determination as to whether the Hillcrest Church was a connectional church, was made by the trial court — not by the Presbytery. Inherent in *Watson v. Jones,* supra, is the proposition that the court first determine in which class of religious organization the church group belongs. From the evidence produced at the trial, the trial court specifically found, Findings of Fact IV "The church government is the Presbyterian form of government, with the various components thereon constituting one united sovereign church, and not independent or congregational (R. 8). The trial court did not abdicate this duty to either of the parties.

2. Respondent's dissolution of the petitioner was not a civil law matter.

Prior to and during August 1967, representatives of respondent, Presbytery of Seattle (hereinafter "Presbytery") attempted to meet with representatives of the Hillcrest Church and advise them of proper procedures under the Constitution of the United Presbyterian Church (R.

573). The efforts were rebuffed (Ex. 45, 46, 47, 48, 49, 50, 51, 52 and 53) and a letter was sent by Hillcrest Church to Presbytery advising that the church renounced the jurisdiction of the United Presbyterian Church and of the Presbytery of Seattle (Ex. 57).

Presbytery, in response, at its August 20, 1968, meeting, ruled, after proper notice (R. 570), that the Hillcrest Church was dissolved under Form of Government 42.08 (Ex. 20) and that the church was to deliver possession of all church properties to Presbytery (Ex. 68) (Ex. 20-62.11). The action of Presbytery, was not appealed to a higher judicatory within the United Presbyterian Church to which it has been taken (Ex. 20).

This in no way pertained to the civil corporation of the Hillcrest Church. The dissolution was of the ecclesiastical congregation — a termination of Hillcrest Church as a church body in the Presbyterian family. Flowing from such action, under the provisions of the Constitution of the United Presbyterian Church in the U.S. of A. (Ex. 20-62.11), was the requirement that the still-in-existence civil corporation relinquish possession, title and control of the church property.

3. The present case is not a case of national importance.

Contrary to the impression created by Petitioners (Pet. 13), there is not a revolt brewing within the United Presbyterian Church. As of January 1972 there were 8,812 churches within the United Presbyterian Church. Since 1967 few churches, probably less than eight, have been involved in litigation over church property. To extrapolate

eight churches into "many hundreds of churches" requires substantial imagination.

The Petitioner misrepresents that 300 churches have separated from the United Presbyterian Church in the United States of America (Pet. 14). No such activity affects the respondent United Presbyterian Church. A schism over theology does affect an entirely unrelated church organization, *not* the United Presbyterian Church in the United States of America.

The national church involved in the present case is the same one involved in *Watson*. The principles of *Watson* have guided the United Presbyterian Church since 1872, just as those principles have guided Presbyterian churches in the State of Washington since 1898. As the Washington Supreme Court stated in its unanimous opinion in *Presbytery of Seattle v. Rohrbaugh, infra:*

> "This Court has adopted the rule of *Watson vs. Jones*, supra, in cases of this kind . . . We see no reason to abandon it" 79 Wn.2d at 373, 486 P.2d at 619.

This decision by the Washingto Supreme Court is neither unusual nor of national importance. It simply is the seventh time since 1898 that the Washington Court has elected to adopt the principles of *Watson*.

4. No misrepresentation or fraud of respondent occurred.

There never was any question that (a) the civil title of the Petitioner property was in a civil corporation established by Petitioner, and (b) that such title possession and ownership was subject to the jurisdiction and control of the United Presbyterian Church in the United States of America.

The leader of the Hillcrest Church, Rev. Haldane Duff, serving as pastor to the congregation for 20 years, testified

at length as to the membership and participation of the church in the Presbytery. When asked whether officers of the church had copies of the Book of Order and Form of Government of the United Presbyterian Church for their use, Rev. Duff responded (R. 101) that such officers did have such copies and that the same were at all times available and used in the church. In the years that Pastor Duff served the church, he had ordained most, if not all, of the officers of the church who were active in 1967, and from each one he had received an affirmative response to an oath to support the form of government of the United Presbyterian Church (R. 212).

Mr. W. L. Dettlor, an ordained minister, called as a witness by the Petitioner church, advised that he had substantial background in Presbyterian law, had served as stated clerk for the Presbytery of Seattle for several years. Mr. Dettlor makes it clear in his testimony that the Presbytery had authority to dissolve the church (R. 664), several other churches having been dissolved during his affiliation with the Presbytery (R. 694), and that upon dissolution (R. 694), the property of the church reverted to the Presbytery (R. 665, 666). Dr. Dettlor also informed that official copies of the church government were sent regularly to each individual church (R. 667). He advised that every particular church was required to obtain permission from the Presbytery prior to selling or mortgaging any of its real property and that copies of this church law were furnished to the individual churches (R. 678). Finally, Mr. Dettlor confirmed that the language in the articles and bylaws of the Hillcrest Church conformed with the requirements of the Form of Government of the United Presbyterian Church (R. 692, 693).

CONCLUSION

Petitioner has shown no "special and important reasons" for this court to grant its Petition. There is no federal question of substance in this case which has not already been determined by this court. Nor does the decision of the Washington Supreme Court conflict with applicable decisions of this court or of other state courts. On the contrary, the Washington Supreme Court based its decision on the *Watson* "rule of action" one of the three approaches to resolving church property disputed permitted by *Hull Church*, and other relevant decisions of this court.

Even if this court were to overrule *Watson*, *Hull Church* and other concurring opinions by requiring the application of "neutral principles of law" to resolve church property disputes, the result in the present case would not change.

For the foregoing reasons, the Petition should be denied by this court.

Respectfully submitted,

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